REMARKS

The Office Action mailed March 30, 2004, has been carefully considered along with each of the references cited therein.

Claims 1 and 4-19 are presented for examination.

Claims 2 and 3 have been cancelled.

Claims 1and 4 -10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (CA 2064270) in view of Andersson, et al .(#5,155,799), as discussed in paragraph 2 of the last Office Action.

Claim 11 has been allowed.

Claims 12-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Davis, et al. as discussed in paragraphs 4 and 5 of the Office Action mailed May 3, 2002.

New Claims 20 and 21 are presented to more clearly define Applicants' invention. Claims 20 and 21 call for manifolds and diverter valves similar to those of Claims 9 and 10.

The examiner stated that Davis does not show the hot air means as claimed. Davis '270 (page 7) discloses heat seal wheels 17 with teeth 18 that grip, serrate and seal at the same time and at the same location. The examiner further stated in the last Office Action that Andersson, et al. teaches the concept of sealing webs using heated air means and that hot air has advantages with regard to rapid and concentrated heating (Col. 2, lines 8+).

The examiner indicated that little patentable weight is given to the location of parts unless there is some criticality or unexpected result from the location. The examiner further indicated that the actual location of where the heat is applied is a matter of where the user wants to create a seal/bond to close the bag. In addition, the examiner indicated that the actual timing of the perforations would have been obvious with a combination of Andersson, et al. to perform the perforations before the heating step.

While a suggestion or motivation to combine two references may come from the general knowledge of those of ordinary skill in the art, there must be actual evidence of such a suggestion or motivation and the showing must be clear and particular. In re Dembiczak, 175 F.3d at 999, 50 USPQ2d at 1617 ("Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence."; In re Gartside, 203 F.3d 1305, 53 USPQ2d 1769 (Fed. Cir.

2000); see also, Smith Indus. Med. Sys. v. Vital Signs, Inc., 183 F.3d 1347, 1356, 51 USPQ2d 1415, 1421(Fed. Cir. 1999) ("That knowledge may have been within the province of the ordinary artisan does not in and of itself make it so, absent clear and convincing evidence of such knowledge."); see In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Applicants respectfully take issue with the position of the examiner. It is improper to ignore the limitations of the claim and summarily state that Davis and Andersson disclose perforations and sealing and that the location of the perforations, the location of the seal and the method of forming the seal is merely a matter of design choice.

In re JAPIKSE, 86 USPQ 70 (CCPA 1950), relied on by the examiner for the proposition that little patentable weight is given to the location of parts unless there is some criticality or unexpected result from the location, does not afford the examiner the privilege of indiscriminately picking and combining structures to produce Applicants invention. In re JAPIKSE, the Court stated:

> "* * * Claim 11 attempts to distinguish from the references only in stating that "floating" means within the table structure moves the table cover or transfer plate. This expression is broad and does not distinguish from swinging cylinder 36 of Dievers o f [or] from Cannon's rack and pinion cover drive. Claim 13 attempts to distinguish by the functional statement that the drive means is constructed to move less than the cover or transfer plate. * * * Cannon uses reduction gearing between motor 55 and pinion 54, and could use speed increasing gearing instead without invention, since no more than design or choice is here involved. * * * These claims actually attempt to distinguish over the references by a broad and functional recital of applicant's double rack and pinion structure, which structure the examiner stated was well known (paper No. 5), and in which statement applicant concurred , (paper No. 6, pages 7 and 8). [Italics ours]
> The documents are referred to again in the examiner's statement in connection with rejected claims 12, 14, 15, and 20, after they had been expressly rejected on the patent to Cannon alone, "from which," says the statement, "they differ only in varied recitals of the double rack and pinion drive of the transfer tables. * * * No more than skill would be required to replace Cannon's geared transfer plate drive with this well-known double rack and pinion drive."
> The matter "added as of interest" was referred to by the tribunals of the Patent Office only in connection with rejected claims 11, 12, 13, 14, 15, and 20, which embraced the so-called "rack and pinion" feature.
> [1] A careful study of the decision of the board seems to us fairly to show that it regarded claims 11, 12, 13, 14, 15, and 20 rejectable independently of the

> added matter to which it referred as "the three secondary references." In fact, no allusion to such matter is found in its approval of the Primary Examiner's rejection of claims 11 and 13 on Cannon or Dievers, and such allusion as is made to it in approving the rejection of claims 12, 14, 15, and 20 on Cannon appears to have been made in order to make clear the point, i. e. "mounting a rack of a double rack and pinion driving means on one of the beaver tails," which led the board to reverse the Primary Examiner's rejection of claim 16.
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> "In the brief of the Solicitor for the Patent Office it is pointed out that the claim reads on Cannon except as to the final limitation reading "means disposed in alignment with said opening for contact by said depending means to start the pressing operation of said hydraulic press." As to that limitation it was held that there would be no invention in shifting the starting switch disclosed by Cannon to a different position **since the operation of the device would not thereby be modified.**" (Emphasis added.)

Claim 1 has been amended to provide that the row of perforations in the bag neck is formed before the heated air jets engage the neck of the bag to assure that the bag is perforated while it is cool and before it is heated to the point at which it might tend to stretch and deform while perforations are being formed, and wherein the air impinges against the portion of the bag bridging between the spaced grippers such that the molten plastic or any ink which may be softened by the heated air is not offset onto the grippers or any other mechanism before the neck of the bag is cooled. This method of Claim 1, which is not suggested by either of the references, would significantly modify the operations of both Davis and Andersson.

Applicants respectfully urge that the motivation to combine the references as proposed by the examiner is too general because it could cover almost any alternation and does not address why this specific proposed modification would have been obvious. Additionally, there is nothing in either of the references that would suggest gripping a perforated neck of a bag between spaced grippers and directed heated air jets to engage the segment of the bag bridging between the spaced grippers for fusing panels of the bag together for form a sealed strip spaced from the row of perforations in the neck of the bag. Applicants respectfully urge that the proposed amendment to Claim 1 be entered to place the application in condition for allowance.

Claim 4 has been amended to call for a method of forming a tamper evident seal on a plastic bag having a neck, with ink on the neck of the bag that may be softened by heat, and sides welded together to render the contents of the bag accessible containing a loaf of bread including the steps

of:

delivering air heated to a temperature in a range between about 315° and 600° Fahrenheit in a stream to impinge against the surface of the bag; and

gripping portions of the bag adjacent opposite sides of the segment of the bag against which the stream of air impinges, and wherein the air impinges against the portion of the bag bridging between the spaced grippers such that the molten plastic or any ink which may be softened by the heated air is not offset onto the grippers before the neck of the bag is cooled.

In response to applicants argument regarding claim 4 and claim 12, the examiner stated that he reads these claims in a broad context. The ink is claimed as "may be softened by heat" which is a capability type limitation. This ground of rejection is not understood. Clarification is requested.

Claim 6 has been amended to call for means for forming a row of perforations in the bag adjacent the gripped portions of the bag; and means for delivering temperature controlled gas to impinge against the surfaces of the bag between the gripped portions for fusing portions of the bag between the gripped portions for forming a sealed strip, said perforations being positioned to permit removal of the sealed strip, said means for forming a row of perforations in the bag and said means for delivering temperature controlled gas to impinge against the surfaces of the bag being spaced apart such that the air impinges against the portion of the bag bridging between the spaced gripped portions such that molten plastic softened by the heated air is not offset onto the means for gripping spaced portions of the bag before the sealed strip is cooled.

Claims 12-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over David, et al. as discussed in paragraphs 4 and 5 of the Office Action mailed May 3, 2002.

The examiner stated that in response to Applicants' argument regarding Claim 4 and Claim 12, the examiner reads these claims in broad context. Claim 12 has been amended to delete "which may" and to insert – is – to assure that the claim does not contain any "capability type limitations."

Applicants respectfully urge that this interpretation of the claims is improper. The examiner must consider the claim limitations and find some teaching in the references for the proposed modification. Applicants respectfully urge that there is no suggestion, other than Applicants' dissclosure, to direct heated air jets for forming the seal in a manner called for in Claims 4 and 12, and it is respectfully urged that such claims be allowed.

Applicants respectfully urge that it is immaterial that Davis used a pressed bag code to provide information on a bag. Applicants do not claim this feature. They have invented a method of perforating and heat sealing a printed bag. They have solved a problem that others have not resolved.

Applicants respectfully take issue with each and every statement made by the examiner with regard to the rejection of Claims 1-10 and 12-19 set forth in the Office Actions mailed February 28, 2003, May 3, 2002 and March 30, 2004. Applicants respectfully urge that Claims 1, 4-10 and 12-19 are allowable.

All claims are believed to be in condition for allowance. If the examiner is of the opinion that a telephone conference would speed prosecution of the application, please call the undersigned.

The application as now presented appears to be in condition for allowance, and such action is respectfully solicited.

The Commissioner of Patents is hereby authorized to charge any fees or overpayments to Deposit Account 50-3057. A duplicate copy of this fee authorization sheet is enclosed for this purpose.

Dated: September 30, 2004

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed for the COMMISSIONER OF PATENTS, P. O. BOX 1450, ALEXANDRIA, VA 22313-1450 on:

September 30, 2004
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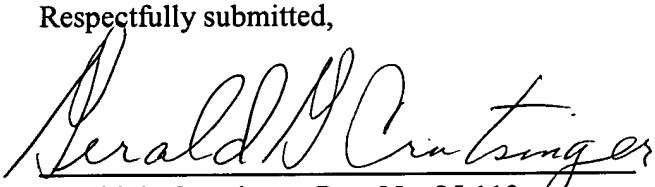
Gerald G. Crutsinger
Name of Applicant, Assignee or Registered Representative

Signature

September 30, 2004
Date of Signature

Respectfully submitted,



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